Robert F. Kennedy, and the chaos of the 1968 Democratic convention in Chicago. When society is a bucking bronco, it takes tough and colorful people to ride it and keep it under control. Our little microcosm had them in obvious abundance.

The Knight of the Broken Mold

Tears overflowed her broad cheeks like the flooded Missouri over an Iowa cornfield. Inarticulate in the best moments of her existence, she was rendered incoherent by emotion. The scene—the office of a Dayton lawyer in the depths of the Great Depression. The centerpiece—a client in the throes of a greater depression. "He's gone. Last night, Charlie was at my side, his old sweet self. When I woke up this morning, he was gone." The tears continued to burst the dikes as she choked out these words to her compassionate counselor.

Not many attorneys serve the role as tracer of lost persons, but Herb Eikenbary was no common attorney. And the lost person was, as further cogent inquiry elicited, not a person, but a pet chicken named Charlie.

As this scene unfolded in an early episode of Eikenbary's lengthy practice of law, he did all that could be expected of a skilled attorney. Calming his client's momentary hysteria and native lack of verbal ability, he learned of the bond of deep affection between the lady and her pet chicken, the exact time and place when and where Charlie was last seen, the bird's idiosyncrasies and characteristic patterns of behavior, and the precise dimensions of the client's financial ability.

When the storm subsided and the story ended, he acted with decisiveness and confidence. "Give me $10, report to my office at this very hour tomorrow. With my legal training, vast experience, and community contacts, I'll find that chicken if I have to get search warrants for every home in Dayton."

At that very hour the next day, torn by hope and doubt, the lady reappeared at Mr. Eikenbary's office. "Where's Charlie?" With a majestic sweep of his arm, the inimitable Herb pointed to the corner of the room where a chicken bereft of all but a few feathers and displaying more than a few nicks and bruises was wobbily ambulating through a series of distorted figure eights. "There's Charlie." A pause in the conversation was filled with studied scrutiny. "That ain't Charlie."

Moments like this separate the journeyman lawyer from the genius. Leaning back in his swivel chair, clasping his hands across his expansive belly, Eikenbary recounted by moment the series of dramatic events and adventures that
Charlie had encountered since he had strayed from his owner’s home. It was a story that would hold a schoolroom of skeptics spellbound, that would make the author of the Odyssey blush. Tears—this time not of sorrow but of joy and recognition—glistened in the lady’s eyes as she clutched her prodigal pet to her heaving bosom. Never did client obtain more satisfaction for the price of an attorney’s fee! And, to augment the happiness of the occasion, Elkibary had earned $9.90 and Frank’s Poultry Yard which he had passed on his way to work that morning had earned a dime.

Herbert M. Elkibary—God bless him—the Owl—the Claw—a Churchillesque figure whose reception room was graced with matching oil portraits of himself and of Winston Churchill—a comic genius in the tradition that reaches from Falstaff through Mr. Pickwick—was born in Montgomery County in 1902. In 1926 he was the valedictorian of the first graduating class of the University of Dayton Law College, and from that moment until his death in 1974 he earned and deserved a reputation as the most colorful and beloved lawyer in the history of this city’s bar.

If you are an astute and observant reader, you have noticed that this chapter is organized aesthetically as a mirror to the last chapter, with topics passing by in reverse order. In the corresponding section of the last chapter, we encountered a flock of American Eagles. Here we have a solitary, bemused owl. The shift should not be considered a sign of diminishment in the breeding of Dayton lawyers. Whatever owls may lack in the sternness and soaring power of eagles, they make up in wisdom and keenness of observation. If the last generation of Dayton lawyers produced more eagles than this generation produced owls, the owl this generation produced was an equally American bird.

Herb Elkibary’s father had been the sheriff and recorder of Preble County before coming to Dayton as the assistant superintendent of the Dayton State Hospital—the “Asylum” where the fictional Eugene Gant’s brother was sent in Thomas Wolfe’s Look Homeward, Angel. Herb grew up on the grounds of what became the Dayton Mental Health Center Farm—currently the Research Park near Route 675 in southeast Dayton. He played football and baseball at the University of Dayton, and from his school days he maintained a lifelong interest in local, national, and international history. He loved to talk and to travel. He traveled through fifty countries and in 1967 went around the world in sixty days—a trip that undoubtedly rivaled in adventure and incident the eighty-day journey of Phineas Fogg almost a century earlier. His only other excursions from his unique practice of the law were an early stint as a Shakespearean actor in Hollywood and a tour with the navy in World War II—a role in which, according to an obituary he wrote for himself, he was “not a hero, being basically a pension-claimer and a very dry landlubber.” Echoes of sane Sir John in Henry IV, Part 2.

No one who ever met Elkibary ever forgot him. He never met a man or woman who didn’t love him. His style was eccentric and unforgettable. Pearls of literature slipped naturally and frequently from his tongue. In a trial the prosecutor would inevitably be referred to as “the crown,” the presiding judge as his “lordship.”
The routine reputation question in a noncontested divorce case would be rung with such changes as, "What do the peasants of Trash Alley say concerning Alice's penchant for veracity?" He once showed up in a top hat and tails to represent a client in a civil suit. He once pleaded mercy for a forger by telling the judge that the defendant had two of the three requirements for writing a valid check—a pen and paper. The only missing requirement was money in the bank. In 1941 he served as a Dayton Municipal Court judge. Thereafter, he served from time to time as an acting judge despite concern that his appearance on the bench had similarities to Bastille Day in France. Being a man of the people, he had a way of throwing open the workhouse doors.

Here are some extracts from a decision he wrote awarding $1,058.37 to the plaintiff in a simple accident case:

The Court will say that while the propositions and facts are not necessarily unique, they do bring a somewhat vexatious challenge to the tribunal, and mayhaps the Court, Counsel, Spectators and functionaries of the Court may be likewise beset by the challenges and counter-challenges which this imbroglio generates. . . . Now in conclusion, the Court realizes that ultimately every case must be decided, which comes into the judicial grist—win, lose or draw—and that the party prevailing is generally satisfied and that the party against whom a finding is lodged is most unhappy. Such will be the rendition in this instant case, and the Court, sitting objectively, can under its duty only find and decree that, and what, to it is the most logical and preponderant deduction. The Courts are always open and the instant judge will observe that if either or both parties are dissatisfied with this mandate and finding and if this action is later reviewed through Appellate Process, and if a different quotient is obtained thereby, this Court will hold no brief or feeling if such a finding occur, as the Court truly appreciates that this is a somewhat difficult case.

I hope the defendant realized it was worth the price of the verdict to obtain so cogent a mediation on the difficulties of judicial decision-making and the cruelty of a system in which somebody has to win and somebody has to lose!

Among Eikembary's prized possessions was a silver loving cup given to him by the grateful habitues of a well-known bawdy house which he had faithfully served as counselor for a number of years. When the madame of the house expired in the 1940s, he noted that "thousands mourned her death, but few attended her funeral."

At one point in his career, he received a lion cub instead of a fee for representing a circus roustabout. He kept the cub in his basement until it grew too big to handle. He finally got tired of throwing raw meat down the cellar stairs and sold the house with the lion in it. History does not reveal the purchaser's reaction to the housewarming surprise. As a local observer once noted, to call Eikembary "colorful" is to label a Rolls Royce "transportation." Much metaphysical speculation could be expended on the question whether lawyers' cases are merely projections of their personalities or whether lawyers' personalities are merely projections of the cases
they have handled. Whatever that relationship may be, there is something there—something as perceptible as the fact that the winner of any local cat or dog show always looks disarmingly like his or her pet. I defended two civil suits that were filed by Eikembry, and I can’t imagine them as having been filed by anyone else.

His client in the first case was a burlesque comedian who worked the circuit of theaters between Cincinnati, Dayton, and Indianapolis. He had finished his run at the Mayfair—an absolutely magnificent palace on Fifth Street which has been physically displaced but, alas, not aesthetically replaced by Dayton’s Convention Center. As he drove toward Indianapolis through the west side on a Friday afternoon a few years after the race riots of the mid 1960s, the client stopped at an Atta Boy gas station to invest $5 in some gasoline. This was long before self-service, but there was no attendant in sight. Finally, a young man came up to the car, accepted the motorist’s request for service, and put $5 worth of gasoline in the tank. When Eikembry’s client pulled out his wallet to pay for this service, the young man grabbed the wallet and ran up the street and out of sight.

Eikembry’s client in the second case was a refugee from the coal mines of Kentucky who had made enough money working in Dayton to take his wife and three kids on a vacation in California. After a nonstop drive across the plains and over the desert, they rented a set of rooms in a cheap motel outside Los Angeles and collapsed for the night with the parents in a double bed in the front room and the kids in a double bed in the back room. Fatigue, however, did not yield sleep to the luckless father. Immediately above the room there was in full sway an orgy that would have made Fatty Arbuckle blush. Clinking glasses, female giggles and male guffaws, squeaking springs, the clatter of feet going up and down stairs, the squeal and roar of cars coming and going—the cacophony never subsided. Sleep finally came, only to be broken by the glare of lights shining into the ex-coal miner’s exhausted eyes.

He stumbled out of bed and—as consciousness slowly returned—he realized that the lights were headlights, that they belonged to an automobile, that the automobile had come through the wall of his bedroom and into his bed, that the bed had gone into the opposite wall and knocked the kids out of their bed in the next room, that a crowd of suddenly sober people were staring at him through the space where the vanished wall had been, that he was naked, and that his wife was in bed under the car bumper. Welcome to L.A.!

Eikembry was a little ahead of his time in arguing that a service station owner should be held liable for failing to watch his pumps and setting a scene for a theft or that a motel owner should be held liable for permitting the kind of riotous behavior that might cause a late arrival at the party to run his car through the wall of a guest’s bedroom. But those were the kinds of cases and clients he drew by some inexorable magnetism of personality. Unlike the world of Thomas Hobbes, the world of Herb Eikembry was never nasty or brutish, and certainly never dull.

His annual ode on the year’s activities of the members of the Dayton bar—a feature of the Herb’s Bar skit that opened every edition of the Gridiron—has been
noted in our discussion of that peculiar institution. Private versions of odes and meditations would arrive on doorsteps and in mailboxes wherever and whenever Eikenbary’s whims struck. In December of 1963 Al Fouts received a two page essay on the unavailability of a writ of habeas corpus or a motion for change of venue to God’s son when he was framed in a kangaroo court on the hillsides of Jerusalem.

So think it over, Al, the troubles of this world are always duplicated through the ages, even the Good Lord could use no gimmicks, or dodges, by way of an Appeal, or a Parole Board, in fact he couldn’t even cop out. So Christmas Day as you sit around the family turkey, cutting up the joint, Meditate and ponder upon the Eternal Truths, remembering that other men, in other times, have had their travail and woes and gimmicks. Repent and be Saved! Come to the Shepherd! Soon will come the Revolution! Ours is the Christian way of Life!

Anyone who ever received a card or letter from Eikenbary will recognize the closing exhortations as his characteristic substitutes for “yours truly” or “sincerely yours.”

Under Eikenbary’s picture in the 1926 University of Dayton Law College yearbook appears the legend: “May he always be so free from the many little worries with which we are ever concerned.” Since no one can ever gauge the worries of another, I will pass no judgment on that early wish nor will I engage in psychological speculation as to whether there was a core of sadness or loneliness in this unusual and gregarious man. Suffice it to say that he made a lasting impression on all he met and that he is remembered with a nostalgic smile by each of those fortunate individuals.

He was not a great lawyer. His skills were more in sympathy than in advocacy. Defending a man and woman who had been arrested in a hotel room and charged with fornication and adultery, he addressed Judge Hodapp in Municipal Court, “Your Honor, who is not guilty of such an offense?” Hodapp found himself suddenly afflicted with judicial deafness. “Now, what’s that you’re saying, Mr. Eikenbary?” “Oh, all but you, Your Honor.” In a motion to set aside an ex parte entry obtained by Cliff Curtner in a suit Eikenbary had filed to collect a debt for a local tailor, Eikenbary extended his sympathy even to an unsympathetic adversary.

If Clifford Curtner is hungry and forced to bulk starving tailors out of their thread money, counsel for plaintiff will gladly subscribe his own shiny suits and tattered rags to the cause of defendant’s attorney, or refer him to the many newly created government relief agencies on the banks of the Potomac now efficiently functioning.

His defense of a lady in a murder case resulted in a life sentence. His comment on the verdict was that “if we had another three days, we could have gotten the chair!” No dreamer of courtroom miracles, he always put crisis into the comic perspective.

Eikenbary once filed a writ of replevin in a divorce case for a female client who had suffered the indignity of having her false teeth stolen by her estranged
husband. The grounds for the writ were that in the absence of those teeth, the poor lady could not communicate with her counsel. She was simply "full of sound and fury, signifying nothing." On another occasion a distraught lady caught him in the lobby of the courthouse and excitedly told him she had been trying to reach him for three days for advice on what to do about the city's failure to pick up her garbage. Never at a loss, Eikenbary calmly replied, "How fortunate that you found me, madam. I've just been researching the Revised Code and case law on that subject. If the city doesn't pick up your garbage in the next three days, you have every right under the law to keep it."

Eikenbary's ultimate self-assessment of his legal skills and legal career came in his response to a form letter sent to Dayton's law firms by an aspiring young Notre Dame law student seeking post-graduate employment:

Your biographical resume is most comprehensive and illuminating and bespeaks your qualifications past and present. However, I must tell you that my professional realm is that of somewhat free and easy practice representing people exclusively disturbed and undisturbed... I must confess that for 46 years, I have lived in a legalistic demimonde representing bank robbers, safe crackers, women of easy and uneasy virtue, petty gamblers, panderers, procurers, clothesline thieves, pickpockets and miscreants large and small, of every vintage and degree, including the halt, the lame and the blind, all who are at odds with themselves, their God, their country and their fellow men. And so truly, my daily grind is as exemplary compared to a prestigious corporate practice, yet we do here try to serve the vicissitudes and aberrations of the body politic, including the great unwashed and unbaptized....

Gary Gottschlich, the unsuspecting recipient of this letter from a man he knew only as a name in the Dayton Legal Directory, somehow had the courage to continue his studies in the law and the temerity to come to Dayton to practice that profession. He took Eikenbary's advice, however, and confined his associations to firms that exclusively represent the washed and the baptized.

Eikenbary's office was a reflection of his personality. Aside from the matching portraits of Eikenbary and Churchill in the waiting room and the stone owl on the porch, I won't attempt to describe the interior or exterior of the little house on the southeast corner of Second and Wilkinson streets known as the Lawyer's Building. After all, only Dickens could do it justice. Eikenbary moved there after World War II when he returned from his stint with the navy. As he went off to his version of war, he had rid himself of his former office by running the following ad in the Daily Court Reporter:

FOR TRANSFER! (All of the below as inventoried)
Law office—to rent or lend-lease or donate—complete with its library, furniture and pleasant view, together with chattel mortgages, firmly annexed.

You march in—I march out, against the foreign foe.
If I'm liquidated beyond the seas, the office is yours,
if I return, it's mine again.

The odds are, by far, every bit as good as a ticket on the Irish
Sweepstakes.

Therefore, this attraction includes one going Law Office, and as a
bonus, you receive, complete, the following:
A. Its righteous plaintiffs
B. Its tortured defendants
C. Its persistent bill collectors (present and future)
D. Its magazine hawkers
E. Its charity solicitors
F. Its quiet evenings
G. Its accounts receivable (with and without vexatious litigation)

211 Mutual Home Building FU-5052

In 1968, the tragic year with which this chapter ends, Eikenbary vacated the
Lawyer's Building so that it could be demolished to make way for the new First
National Bank Building. In the same fateful year, Wayne Carle was named superin-
tendent of the Dayton Schools, setting the stage for a decade of turmoil over
desegregation. Norman Thomas, a six-time candidate for the presidency of the
United States on the Socialist party ticket, died. The last performance at the Mayfair
Burlesque House was given. White students, fans, feathers, g-strings, and Eikenbary
were all swept out of downtown Dayton.

It remains only to note the kindness, support, and consideration Eikenbary
unfailingly gave those he touched, especially young lawyers. At the time of his death
his friend Jack Patrioff received a call from a woman who had once worked as a
cleaning lady at the Lawyer's Building. She told of Eikenbary's talking to her while
she cleaned the offices and encouraging her to advance her education and aspire
to a more rewarding profession. Eikenbary matched his encouragement with a gift
to finance her studies, and she became a professional nurse. There were many such
stories. A twelve-year-old newsboy who delivered papers to the Lawyer's Building
received from Eikenbary work, financial help, fatherly advice, and emotional
support that carried him through college to law school and to an active life as a
practicing lawyer in Dayton. Many young lawyers found themselves given rent-free
space in the Lawyer's Building to build up a practice without the burden of
overhead until they could fly with their own wings.

Eikenbary's last laugh was typical of the humor and humanity that character-
ized his entire life as a lawyer. He was a bachelor, never at a loss for lady friends, but
never one to let a friendship deteriorate into matrimony. He wrote a will that
reflected his love for the law and his community and also provided work for lawyers
and the courts by provoking a lawsuit. The provisions of the will, like much of
Eikenbary's work, were more flamboyant than precise, and Roy Horn on behalf of
Eikenbury’s next of kin fought an unsuccessful battle against Bill Clark and Don Schweller on behalf of the bar association and Tom Folino on behalf of the estate to dismantle the intent behind those provisions. The intent emerged indomitable and intact from trial and appeal, and today, the Dayton Bar Association administers the Herbert M. Eikenbury Trust, which provides loans to young lawyers who are struggling to establish themselves in the honorable profession they have chosen.

Humor, humanity, eccentric individuality—three traits that seem to be on the risk-of-extinction list. As the practice of law passes to the faceless efficiency of law clinics and megafirms, may Eikenbury’s ghost return from time to time to remind the practicing lawyers of today and tomorrow of the touchstones that make law and life meaningful. Not so much a great lawyer as a good man, the Knight of the Broken Mold left us wonderful memories and an unspoken message that goodness is higher on the scale of human values than greatness.

The Patent Bar and the Advent of House Counsel

Not all of the clients available to Dayton lawyers between 1945 and 1968 were procurers and clothesline thieves. The wealth of inventive genius that burgeoned in Dayton as the century turned still blossomed in the industrial boom during and after World War II. And where there are blossoms, there are bees. Harry A. Toulmin, Jr. continued to thrive in the patent practice that he and his father had built by strength of their dominant personalities. When Toulmin died in the late 1960s, however, his office died with him and his staff dispersed. The patent firm founded by Greer Maréchal in 1925 proved a more lasting institution.

Lawrence B. Biebel joined Maréchal & Noe in 1930 and developed into the dean of the Ohio patent bar. After Noe’s death the firm became Maréchal & Biebel. In 1945 a third man was added to the firm in the person of Nathaniel French, who had been admitted to the bar in 1937, practiced in New York, and spent five years as first assistant to the patent counsel of Polaroid Corporation. Three years later they were joined by Dailey L. Bugg, a national authority on trademarks and copyrights, who had graduated from Harvard Law School in 1929 and practiced in New York for many years before coming to Dayton. In 1955–1956 Biebel served as president of the National Patent Lawyers Association. In 1970–1971 French followed him into the same position.

The firm of Maréchal, Biebel, French & Bugg earned an enviable national and international reputation in the world of intellectual property law. Most of the major and many of the minor inventors of Dayton’s